U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 August 2006Case No.: 2005-BLA-5146

In the Matter of:

M. C. L.,
Claimant

v.

Whitaker Coal Company,
Employer

Sun Coal Company,
Carrier

And

Director, Office of Workers' Compensation Programs,
Party-In-Interest

DECISION AND ORDER DENYING BENEFITS[1]

This proceeding arises from a claim for Benefits under the Black Lung Benefits Act of 1977, 30 U.S.C. §901 *et seq.* (hereinafter "the Act"). In accordance with the Act and the regulations issued thereunder, the case was referred by the Director, Office of Workers' Compensation Programs for a formal hearing.

Benefits under the Act are awardable to miners who are totally disabled within the meaning of the Act due to pneumoconiosis, or to the survivors of miners who were totally disabled at the time of their deaths (for claims filed prior to January 1, 1982), or to the survivors of miners whose deaths were caused by pneumoconiosis. Pneumoconiosis is a dust disease of the lungs arising from coal mine employment and is commonly known as "black lung."

[1] Part 718 of title 20 of the Code of Federal Regulations is applicable to the current claim, as it was filed after March 13, 1980, and Part 725 is also applicable.

A formal hearing was held before Administrative Law Judge Richard E. Huddleston on February 1, 2006, in London, Kentucky, at which time all parties were afforded full opportunity in accordance with the Rules of Practice and Procedure (29 C.F.R. Part 18) to present evidence and arguments as provided in the Act and the regulations issued thereunder, set forth in Title 20, Code of Federal Regulations, Parts 410, 718, 725, and 727. At that hearing, Judge Huddleston admitted into the record Director's Exhibits (DX) 1-35, Claimant's Exhibits (CX) 1 and 2, and Employer's Exhibits (EX) 1-7. Judge Huddleston subsequently retired, and the case was reassigned to me for a decision on the record, after the parties advised that they did not wish to have a new hearing. The Claimant submitted a brief on April 24, 2006; the Employer submitted a brief on May 5, 2006; the Director did not file a brief.

I have based my analysis on the entire record, including the transcript, exhibits, submitted brief, and representations of the parties, given consideration to the applicable statutory provisions, regulations, and case law, and made the following findings of fact and conclusions of law.

Jurisdictional and Procedural History

On October 16, 2003, Mr. L. filed his application for black lung benefits under the Act. (DX 2) On August 2, 2004, the District Director (Director) issued a Proposed Decision and Order denying Mr. L.'s claim for benefits (DX 28). Mr. L., through counsel, disagreed with the Director's findings, and requested a hearing before an Administrative Law Judge (DX 31). On September 29, 2004, this matter was forwarded to the Office of Administrative Law Judges for *de novo* adjudication. (DX 33). As stated above, a formal hearing was held before Judge Huddleston on February 1, 2006.

Issues

The Employer contests the following issues:

1. The length of Mr. L.'s coal mine employment.
2. Whether Mr. L. has coal workers' pneumoconiosis.
3. If so, whether his pneumoconiosis was caused by his coal mine employment.
4. Whether Mr. L. is totally disabled.
5. If so, whether his total disability is caused by pneumoconiosis.

(DX 33; Tr. 6, 29-30). The Director contests these same issues, with the exception of the length of his coal mine employment.

Findings of Fact and Conclusions of Law

Background

Mr. L. was born on August 17, 1961. He completed the 12th grade in school, and two years of college (DX 2; Tr. 10). In his application, Mr. L. stated that he had 15 years of coal mine employment, ending in 2000, when he stopped working due to back pain (DX 2). Mr. L. is not currently married; he and his former wife, M. E., divorced in 1992. Mr. L. has two daughters who were under the age of 18 at the time of his application, who are dependent on him; his oldest daughter turned 18 on July 22, 2006 (DX 2). I find that Mr. L. had two dependents for purposes of augmentation of benefits until July 2006, when his oldest daughter turned eighteen; after that time, he has one dependent.

Mr. L. testified that about 80 percent of his coal mine work was underground; he also worked as a laborer at the preparation plant (Tr. 10-11). Since he left his job as a coal miner, his breathing has gotten worse, with shortness of breath and coughing and wheezing at night, and shortness of breath on exertion (Tr. 14).

Mr. L. testified that the last coal company for which he worked for more than a year was Whitaker Coal (Tr. 27). The Director determined that Mr. had 10.24 years of coal mine employment (DX 28). This is supported by Mr. L.'s Social Security Earnings records, as well as company records (DX 5-7). I find that Mr. L. has 10.24 years of coal mine employment. Mr. L.'s Social Security Earnings records also establish that Whitaker Coal Corporation was the last coal mining company to employ Mr. L. for a cumulative period of at least one year. The Employer does not contest its status as the responsible operator, and I find that the Employer is properly designated as the responsible operator.

Medical Evidence

X-Ray Evidence

The following x-ray evidence is in the record.

Exhibit No.	***Date of X-ray***	***Reading Date***	***Physician/ Qualifications***[2]	***Impression***
DX 15/ EX 5	12-4-03	3-2-04	Hayes/B, BCR	Negative for pneumoconiosis
DX 12	12-4-03	12-31-03	Barrett/B, BCR	Read for quality purposes
DX 11	12-4-03	12-4-03	Simpao	1/0, p, p
DX 17	3-11-04	3-11-04	Dahhan/B	0/0

[2] "B Reader" and "Board-certified radiologist" are designations that indicate qualifications a person may possess to interpret x-ray film. A "B Reader" has demonstrated proficiency in assessing and classifying chest x-ray evidence for pneumoconiosis by successful completion of an examination. A "Board Certified Radiologist" has been certified, after four years of study and an examination, as proficient in interpreting x-ray films of all kinds including images of the lungs.

Exhibit No.	*Date of X-ray*	*Reading Date*	*Physician/ Qualifications*[2]	*Impression*
EX 2	2-4-05	2-4-05	Rosenberg/	0/0

Pulmonary Function Studies

The following pulmonary function study evidence is in the record.

Exhibit No.	*Date*	*Age/Ht*	*FEV1*	*FVC*	*MVV*	*Effort*	*Qualifying*
DX 11	12-4-03	42/73	4.04	5.07	85	Good	No
EX 17	3-11-04	42/184 cm	4.07	5.01	67	Good	No
EX 2	2-4-05	43/72”	4.02	5.13	187	Good	No

Arterial Blood Gas Studies

The following arterial blood gas study evidence is in the record.

Exhibit No.	*Date*	*Physician*	*pCO2 (rest) pCO2 (exercise)*	*pO2 (rest) pO2 (exercise)*	*Qualifying*
DX 11	3-11-04	Simpao	39.8	90.9	No
EX 2	2-4-05	Rosenberg	42.1	86.1	No

CT Scan Evidence

Mr. L. underwent a high resolution chest CT scan on February 4, 2005 (EX 4). Dr. Dennis Halbert, who reviewed the film, noted a coarse linear scar in the right middle lobe, and a minimal amount of scarring in the lingula. He saw no nodular opacities to suggest the presence of coal workers’ pneumoconiosis. He did not see any pleural nodules or areas of emphysema.

Medical Reports

Dr. A. Dahhan

Dr. Dahhan examined Mr. L. at the Employer's request on March 11, 2004 (DX 17). He reported Mr. L.'s coal mining history, as well as his medical history and symptoms. On examination of Mr. L., Dr. Dahhan noted good air entry to both lungs, with no crepitations, rhonchi, or wheeze. Mr. L. underwent pulmonary function testing, which indicated normal respiratory mechanics, with no evidence of restrictive or obstructive ventilatory abnormality. Mr. L.'s x-ray showed clear lungs, with no pleural or parenchymal abnormalities consistent with pneumoconiosis, and an ILO classification of 0/0. Mr. L. was unable to undergo arterial blood gas testing. Dr. Dahhan also reviewed Dr. Simpao's examination report.

Dr. Dahhan concluded that there were insufficient objective findings to justify a diagnosis of coal workers' pneumoconiosis, based on the normal clinical examination of Mr. L.'s chest, the normal pulmonary function studies, and the negative x-ray reading. He stated that Mr. L. had no objective findings to indicate that he had any pulmonary impairment or disability, based on the normal clinical and physiological parameters of his respiratory system. He felt that from a respiratory standpoint, Mr. L. retains the physiological capacity to continue his previous coal mine work, and that he has no evidence of pulmonary impairment or disability caused by, related to, contributed to, or aggravated by his inhalation of coal dust or pneumoconiosis. He noted that Mr. L. has essential hypertension, arthritis, hyperlipidemia, and allergies, all of which are conditions of the general public at large, and not related to his inhalation of coal dust or pneumoconiosis.

Dr. Dahhan also testified by deposition on June 27, 2005 (EX 1). He noted that Dr. Simpao had reported that Mr. L. had a mild respiratory impairment, but that there was no evidence in his report to support that conclusion. He stated that the spirometry and arterial blood gas results obtained by Dr. Simpao were normal.

Dr. David M. Rosenberg

Dr. Rosenberg examined Mr. L. on February 4, 2005 at the Employer's request (EX 2). He also testified by deposition on June 14, 2005 (EX 4). He reported Mr. L.'s coal mine history, as well as his medical and social histories, and symptoms. Dr. Rosenberg also reviewed Dr. Simpao's report, the records from Christian Cardiology, Dr. Dahhan's report, and objective testing. On examination of Mr. L., Dr. Rosenberg noted equal expansion of his chest, with no rales, rhonchi, or wheezes, and no murmurs, gallops, or rubs. Mr. L.'s chest x-ray was negative for any micronodularity related to past coal dust exposure. Dr. Rosenberg also reviewed the high resolution chest CT scan, which showed no micronodularity, and a right middle lobe scar. Dr. Rosenberg administered pulmonary function and arterial blood gas studies, which produced normal results.

Dr. Rosenberg stated that as Mr. L.'s TLC was normal at 90% of predicted, he clearly did not have restriction. His lung fields were clear on auscultation of his chest, and he did not have chronic end-inspiratory rales. Dr. Rosenberg noted that Mr. L.'s diffusing capacity, corrected for lung volumes, was 128% of predicted, indicating that the

alveolar capillary bed within his lungs is intact. His chest x-ray and high resolution CT scan did not show micronodularity related to past coal dust exposure. Considering all of this information, he concluded that Mr. L. does not have the interstitial form of coal workers' pneumoconiosis.

Dr. Rosenberg also concluded that from a functional perspective, Mr. L. does not have significant obstruction or restriction, and he has normal diffusing capacity and oxygenation. He felt that from a pulmonary perspective, clearly Mr. L. could perform his previous coal mining or similar arduous labor. As his FEV1% is normal, Mr. L. does not have chronic obstructive pulmonary disease.

According to Dr. Rosenberg, Mr. L. does not have coal workers' pneumoconiosis or any associated impairment.

Christian Cardiology

The record includes treatment notes from Christian Cardiology covering the period from April 9, 2001 to January 13, 2003 (DX 16). These records reflect that Mr. L. was treated at Christian Cardiology for hypertension, backache, hypercholesterolemia, allergic sinusitis, anxiety disorder, and depression. Dr. Mahboob saw Mr. L. on April 9, 2001, and noted that on examination he had normal respiratory effort, with no use of intracostal or accessory muscles, resonant percussion, clear anterior and posterior breath sounds, and no rubs or tactile fremitus. Dr. Ali made similar findings during monthly visits in May, June, July, August, September, October, and November of 2001, and January, February, March, April, May, June, July, August, September, October, and November visits in 2002. Dr. Niazi saw Mr. L. at his December 2002 and January 2003 visits, and made similar findings on examination. None of these treatment notes reflect any diagnosis of, treatment for, or even complaints of any pulmonary or respiratory problems.

Simon & True Medical Consultants

The record includes a treatment note by Dr. Ionut Stefanescu of the Simon & True Medical Consultants, dated January 22, 2004 (DX 14). Dr. Stefanescu saw Mr. L. at the request of Dr. Kishore. Mr. L. presented with complaints of low back and neck pain, and bilateral sciatica, caused by a logging accident in 1998. On his examination of Mr. L., Dr. Stefanescu noted that his lungs were clear bilaterally. He prescribed pain medications and physical exercise.

Dr. Valentino S. Simpao

Dr. Simpao examined Mr. L. on December 4, 2003 at the Director's request (DX 11). He noted Mr. L.'s history of coal mine employment, as well as his medical and social histories, and symptoms. He indicated that Mr. L. smoked a cigar now and then between 1990 and 1998. On his examination of Mr. L., Dr. Simpao noted increased resonance in the upper chest and axillary area, tactile fremitus more in the right than left,

crepitations, and rhonchi. Mr. L.'s chest x-ray showed pneumoconiosis category 1/0. His pulmonary function and arterial blood gas studies, and EKG, were normal.

Dr. Simpao concluded that Mr. L. has coal workers' pneumoconiosis 1/0, due to his multiple years of coal dust exposure. He characterized his impairment as mild, and coal dust exposure as a significant factor.

DISCUSSION

To prevail in a claim for Black Lung benefits, a claimant must establish that he or she suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; that he or she is totally disabled, as defined in 20 C.F.R. § 718.204; and that the total disability is due to pneumoconiosis. 20 C.F.R. §§718.202-718.204. The Supreme Court has made it clear that the burden of proof in a black lung claim lies with the claimant, and if the evidence is evenly balanced, the claimant must lose. In *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994), the Court invalidated the "true doubt" rule, which gave the benefit of the doubt to claimants when the parties' evidence was in equipoise. Thus, in order to prevail in a black lung case, the claimant must establish each element by a preponderance of the evidence.

Establishment of Pneumoconiosis

Pneumoconiosis is defined, by regulation, as a "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." 20 C.F.R. § 718.201. The regulations at 20 C.F.R. § 718.203(b) provide that, if it is determined that the miner suffered from pneumoconiosis and has engaged in coal mine employment for ten years or more, there is a rebuttable presumption that the pneumoconiosis arose out of such employment. If, however, it is established that the miner suffered from pneumoconiosis but worked less than ten years in the coal mines, then the claimant must establish causation by competent evidence. *Stark v. Director, OWCP,* 9 B.L.R. 1-36 (1986); *Hucker v. Consolidation Coal Co.,* 9 B.L.R. 1-137 (1986). The claimant has the burden of proving the existence of pneumoconiosis, as well as every element of entitlement, by a preponderance of the evidence. *See, Director, OWCP v. Greenwich Collieries,* 114 S.Ct. 2251 (1995).

Because the current claim was filed after the enactment of the Part 718 regulations, the evidence will be evaluated under standards found in 20 C.F.R. Part 718. The existence of pneumoconiosis may be established by any one or more of the following methods: (1) chest x-rays; (2) autopsy or biopsy; (3) by operation of presumption; or (4) by a physician exercising sound medical judgment based on objective medical evidence. 20 C.F.R. § 718.202(a). I have independently assessed the evidence under each of these methods.

X-rays

To establish the existence of pneumoconiosis, a chest x-ray must be classified as category 1, 2, 3, A, B, or C, according to the ILO-U/C classification system. A chest x-ray classified as category 0, including subcategories 0/1, 0/0, or 0/-, does not constitute evidence of pneumoconiosis.

In this case, the record contains four interpretations of three chest x-rays. Dr. Simpao, who is neither a B reader nor a board certified radiologist, interpreted Mr. L.'s December 4, 2003 x-ray as positive for pneumoconiosis. However, Dr. Hayes, who is both a B reader and a board certified radiologist, interpreted this x-ray as negative for pneumoconiosis. Relying on Dr. Hayes' superior qualifications, I find that this x-ray is negative for pneumoconiosis.

The two subsequent x-rays, performed by Dr. Dahhan on March 11, 2004, and Dr. Rosenberg on February 4, 2005, were interpreted by these physicians, both of whom are B readers, as negative.

As all three of the x-rays in the record are negative, I find that Mr. L. has not established that he has pneumoconiosis by a preponderance of the x-ray evidence.

Biopsy or Autopsy Evidence

Under § 718.202(a)(2), a finding of pneumoconiosis may be made on the basis of biopsy or autopsy evidence. In this case, the record contains no biopsy or autopsy evidence, and thus, I find that Mr. L. has not established the existence of pneumoconiosis pursuant to § 718.202(a)(2).

Allowable Presumptions

Section § 718.202(a)(3) provides that pneumoconiosis may be established if any one of several cited presumptions are found applicable. In the instant case, none of these presumptions apply. The presumption of § 718.304 does not apply because there is no indication that Mr. L. has complicated pneumoconiosis. The presumption of § 718.305 does not apply to claims filed after January 1, 1982. Section 718.306 only applies to survivor claims. Therefore, I find that Mr. L. cannot establish pneumoconiosis under § 718.202(a)(3).

Reasoned Medical Opinion

Mr. L. can also establish that he suffers from pneumoconiosis by well-reasoned, well-documented medical reports. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.,* 10 B.L.R. 1-19 (1987). An opinion may be adequately documented if it is based on items such as a physical examination, symptoms, and the patient's history. *See, Hoffman v. B&G Construction Co.,* 8 B.L.R. 1-65 (1985); *Hess v. Clinchfield Coal Co.,* 7 B.L.R. 1-295 (1984). A report which is better supported by the objective medical evidence of record may be accorded greater probative value.

Minnich v. Pagnotti Enterprises, Inc., 9 B.L.R. 1-89, 1-90 n.1 (1986); *Wetzel v. Director, OWCP,* 8 B.L.R. 1-139 (1985).

A "reasoned" opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician's conclusions. *Fields, supra.* Indeed, whether a medical report is sufficiently documented and reasoned is for the administrative law judge as the finder of fact to decide. *Clark v. Karst-Robbins Coal Co.,* 12 B.L.R. 1-149 (1989)(en banc). Moreover, statutory pneumoconiosis is established by well-reasoned medical reports which support a finding that the miner's pulmonary or respiratory condition is significantly related to or substantially aggravated by coal dust exposure. *Wilburn v. Director, OWCP,* 11 B.L.R. 1-135 (1988). An equivocal opinion, however, may be given little weight. *Justice v. Island Creek Coal Co.,* 11 B.L.R. 1-91 (1988); *Snorton v. Zeigler Coal Co.,* 9 B.L.R. 1-106 (1986).

In this case, Dr. Simpao concluded that Mr. L. has pneumoconiosis, on the basis of his positive x-ray reading. However, I have found that the x-ray evidence does not establish the existence of pneumoconiosis. Dr. Simpao offered no other basis for his conclusion, and thus I find that it is not sufficient to support a finding of pneumoconiosis.

In contrast, Dr. Rosenberg and Dr. Dahhan, who examined Mr. L., and reviewed the other medical evidence of record, and relied on the objective results of all of the testing, concluded that Mr. L. does not have pneumoconiosis. I find that their reports are well reasoned, and supported by the objective medical evidence, and I give them determinative weight.

I find that Mr. L. has not established that he has pneumoconiosis by a preponderance of the medical opinion evidence.

Finally, I have weighed all of the evidence under § 718.202(a), including the x-ray evidence, and I find that Mr. L. has not met his burden to establish that he has pneumoconiosis. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 2000 WL 524798 (4th Cir. 2000).

Total Disability

Assuming, *arguendo*, that Mr. L. could establish that he had pneumoconiosis, I find that he has not established that he is totally disabled due to pneumoconiosis. The regulations as amended provide that a claimant can establish total disability by showing pneumoconiosis prevented the miner "[f]rom performing his or her usual coal mine work," and "[f]rom engaging in gainful employment in the immediate area of his or her residence requiring the skills or abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity over a substantial period of time." 20 C.F.R. § 718.204(b)(1).

Total disability may be established by pulmonary function tests, arterial blood gas tests, evidence of cor pulmonale with right-sided congestive heart failure, or physicians'

reasoned medical opinions, based on medically acceptable clinical and laboratory diagnostic techniques, to the effect that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in the miner's previous coal mine employment. 20 C.F.R. § 718.204(b)(2). Furthermore, under 20 C.F.R. § 718.304, if a claimant can establish the existence of "complicated pneumoconiosis," an irrebuttable presumption arises that the claimant is totally disabled due to pneumoconiosis. For a living miner's claim, total disability may not be established solely by the miner's testimony or statements. 20 C.F.R. § 718.204(d)(5).[3]

Pulmonary Function Tests

Under 20 C.F.R. § 718.204(b)(2)(i), to qualify for total disability based on pulmonary functions tests, for a miner's age and height, the FEV1 must be equal to or less than the value in Appendix B, Table B1 of 20 C.F.R. 718, **and either** the FVC has to be equal to or less than the value in Table B3, or the MVV has to be equal or less than the value in Table B5, or the ratio FEV1/FVC has to be equal to or less than 55%. Should more than one ventilatory study be presented, more weight may be accorded to the results of a recent ventilatory study over the results of an earlier study. *Coleman v. Ramey Coal Co.*, 18 B.L.R. 1-9 (1993).

In this case, the three pulmonary function tests administered to Mr. L. did not produce results that qualify for the presumption of total disability. As a result, Mr. L. cannot establish disability under § 718.204(b)(2)(i).

Arterial Blood Gas Studies

To qualify for Federal Black Lung Disability benefits at a coal miner's given pCO2 level, the value of the coal miner's pO2 must be equal to or less than the corresponding pO2 value listed in the Blood Gas Tables in Appendix C for 20 C.F.R. 718. The Board has held that more weight may be given to the results of a recent blood gas study over a study that was conducted earlier. *Schretroma v. Director, OWCP*, 18 B.L.R. 1-17 (1993).

The two arterial blood gas studies administered to Mr. L. did not produce qualifying results, and thus Mr. L. has not established total disability by virtue of the arterial blood gas study evidence.

Medical Opinions

Claimants can also establish total disability based on medical opinions. In this case, however, none of the physicians who examined Mr. L. and administered functional testing concluded that he has a totally disabling respiratory or pulmonary impairment. Thus, Dr. Simpao characterized Mr. L.'s pulmonary impairment as "mild," despite the

[3] There is no evidence of cor pulmonale.

normal pulmonary function and arterial blood gas study results.[4] Dr. Rosenberg and Dr. Dahhan, who reviewed the other functional studies in addition to the ones they administered, concluded that the pulmonary function and arterial blood gas testing produced normal results, and that Mr. L. does not suffer from any pulmonary impairment. This is consistent with Mr. L.'s treatment records from Christian Cardiology and Simon & True Medical Consultants, which do not reflect any treatment or diagnosis of, or even any complaints of, any type of respiratory problems. Again, I find that the opinions of Dr. Rosenberg and Dr. Dahhan, which are based on the totality of the objective testing and examination reports, are well reasoned and supported, and I accord them significant weight.

Thus, based on these opinions, as I find that Mr. L. has not established that he has a totally disabling respiratory or pulmonary impairment, whether due to pneumoconiosis or otherwise.

CONCLUSION

Based on the above, I find that Mr. L. has not met his burden to establish the existence of pneumoconiosis by a preponderance of the medical evidence. In addition, I find that Mr. L. has not established that he is totally disabled due to pneumoconiosis. Therefore, Mr. L. is not entitled to benefits under the Act and applicable regulations.

ATTORNEY'S FEES

The award of attorney's fees under the Act is permitted only in the cases in which the claimant is found to be entitled to benefits. Since benefits are not awarded in this case, the Act prohibits the charging of any fee to Mr. L. for services rendered to him in pursuit of this claim.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the claim of M. C. L. for black lung benefits under the Act is **DENIED**.

SO ORDERED.

A

LINDA S. CHAPMAN
Administrative Law Judge

[4] In his brief, Mr. L. stated that Dr. Simpao reported that he "did not have the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust-free environment." However, this statement appears nowhere in Dr. Simpao's report.

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.458 and 725.459. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Donald S. Shire, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481.

If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).